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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/610,955

07/01/2003

David Myr

MAK-104US

5768

23122 7590 03/18/2010
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EXAMINER

VIG, NARESH

ART UNIT

PAPER NUMBER

3629

MAIL DATE

DELIVERY MODE

03/18/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/610,955	Applicant(s) MYR, DAVID	
	Examiner NARESH VIG	Art Unit 3629	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 December 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This is in reference to communication received 31 December 2009. Claims 1 – 12 are pending for examination.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1 – 12 are not patentable because the claimed invention is directed to non-statutory subject matter. Based on Supreme Court precedent¹ and recent Federal Circuit decisions, A "process" under § 101 must (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing or (3) the use of a specific machine or transformation of an article must impose meaningful limits on the claim's scope to impart patent-eligibility, furthermore, the involvement of the machine or transformation in the claimed process must not merely be insignificant extra-solution activity². If neither of these requirements is met by the claim, the method is not a patent eligible process under § 101 and should be rejected as being directed to nonstatutory subject matter. Moreover, the recitation of "computer implemented" in the preamble with the absence of

¹ *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876)

² *The Supreme Court recognized that this test is not necessarily fixed or permanent and may evolve with technological advances. Gottschalk v. Aenson*, 409 U.S. 63, 71 (1972), *In re Bilski*, Fed. Cir. 2007-1130

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a computer in the body of the claim or a lack of "another statutory class" in the body of the claim does not make the claim statutory.

Merely reciting "using a microprocessor" does not mean that the said microprocessor performs the claimed limitation. A human can perform the claimed limitation by using said microprocessor as a tool. In addition, claiming the limitation for a "signal" is not patentable because it is directed to non statutory subject matter.

Also in claim 10. applicant has not positively claimed that the claimed calculator is programmed to perform the recited steps.

Response to Arguments

Applicant's arguments and concerns are for amended claims which have been responded to in response to amended claims.

Claim Rejections - 35 USC § 103

Claims 1 – 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robbins US Publication 2001/0039506 in view of Modern Real Estate Practice by Galaty et al. hereinafter known as Galaty.

Regarding claims 1 and 12, as best understood by examiner, Robbins teaches computer-implemented system and method for appraising a real estate property.

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Robbins does not explicitly recite using all three sales comparison approach, an income capitalization approach and a cost approach as different types of appraisal approaches. However, Robbins teaches that in determining the market value of a subject property an appraiser generally considers three separate approaches to value; the Cost Approach, the Income Approach, and the Sales Comparison Approach [Robbins, 0080]. Galaty teaches that appraisers use three basic valuation techniques: the sales comparison approach, the cost approach and the income approach as checks against each other for narrowing the range within which the final estimate of value falls [Galaty, page 304, last paragraph].

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Robbins with teachings of Galaty and generate appraisal using sales comparison approach, the cost approach and the income approach to make the appraisal more useful by checking valuations from different approaches against each other for narrowing the range within which the final estimate of value falls, apply a known technique to a known device (method, or product) ready for improvement to yield predictable results, known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations would have been predictable to one of ordinary skill in the art

Robbins in view of Galaty teaches concept and capability for:

storing influence factors and a range of influence factor values for each of different types of appraisal approaches [Galaty, page 313; Robbins, [0032], claim 56]

defining a nonlinear objective function that can include control variables representing the stored influence factors for all of the different types of appraisal approaches;

executing, using a microprocessor, nonlinear programming of the nonlinear objective function to simultaneously optimize the nonlinear objective function for all of the different types of appraisal approaches by adjusting the control variables within the corresponding range of influence factor values (**a human initiates the application on a microprocessor and enters data**); and

providing further signals indicative of an optimal range of appraisal values for the real estate property from the optimized nonlinear objective function according to each of the different types of appraisal approaches (Using teachings of Galatay, calculates the appraisal value) [Robbins, in view of Galaty, page 305-313],

an output for providing signals indicative of the optimal range of appraisal values for the real estate property,

wherein each of the different types of appraisal approaches are a sales comparison approach, an income capitalization approach and a cost approach [Robbins in view of Galaty], and all of the different types of appraisal approaches can be used together to optimize the nonlinear objective function.

Regarding claim 2, as best understood by examiner, Robbins in view of Galaty teaches capability for optimizing the stored range of influence factors values of each of the different types of appraisal approaches.

Regarding claim 3, as best understood by examiner, Robbins in view of Galaty teaches capability for eliminating all discrepancies or outliers of the stored influence factors.

Regarding claim 4, as best understood by examiner, Robbins in view of Galaty teaches capability for obtaining a respective optimal range of appraisal values for each of the different types of appraisal approaches.

Regarding claim 5, as best understood by examiner, Robbins in view of Galaty teaches capability for performing a feasibility study to determine whether the optimal range of appraisal values meets predetermined economic return requirements for the real estate property.

Regarding claim 6, as best understood by examiner, Robbins in view of Galaty teaches capability for performing a sensitivity analysis using the stored influenced factors for each of the different types of appraisal approaches together to determine a sensitivity of the optimal range of appraisal values to changes in each of the stored influence factors.

Regarding claim 7, as best understood by examiner, Robbins in view of Galaty teaches capability to reconcile the optimal ranges of appraisal values for each of the different types of appraisal approaches.

Regarding claim 8, as best understood by examiner, Robbins in view of Galaty teaches capability to search for combinations of the stored influenced factors that automatically produce a same optimal value as for the influence factors stored individually

Regarding claim 9, as best understood by examiner, Robbins in view of Galaty teaches capability for performing a highest and best use analysis to determine a financial feasibility criteria for each separate use;

Regarding claim 10, as best understood by examiner, Robbins in view of Galaty teaches capability wherein the nonlinear objective function uses project periods that are considered in one of the different types of appraisal approaches

Regarding claim 11, as best understood by examiner, Robbins in view of Galaty teaches capability for calculating different capitalization rates that are considered in one of the different types of appraisal approaches.

Conclusion

Applicant is required under 37 CRF '1.111 (c) to consider the references fully when responding to this office action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NARESH VIG whose telephone number is (571)272-6810. The examiner can normally be reached on Mon-Thu 7:00 - 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

March 14, 2010

/Naresh Vig/
Primary Examiner, Art Unit 3629